

STANLEY BISHOP

IBLA 80-743

Decided October 21, 1980

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Rainy Day lode mining claim, AA-29622, abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment--Mining Claims: Recordation

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work performance during the preceding assessment year on or before this deadline, his claims are properly declared abandoned and void.

APPEARANCES: Stanley Bishop, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On September 24, 1979, Stanley Bishop filed a copy of the certificate of location for the Rainy Day lode mining claim with the Alaska State Office, Bureau of Land Management (BLM). This certificate, assigned serial No. AA 29622 by BLM, indicates that the claim was located on August 11, 1974. Bishop apparently did not file any additional information.

On June 6, 1980, BLM issued a decision declaring the claim void, as Bishop had failed to file a copy of evidence of annual assessment work performed during the preceding assessment year with BLM on or before October 22, 1979, as required by 43 CFR 3833.2-1(a). Bishop (appellant) appealed this decision.

[1] By filing a copy of his certificate of location, appellant complied with section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and 43 CFR 3883.1-2(a), under which the owner of an unpatented mining claim located on or before October 21, 1976, must file a copy of the original certificate of location with BLM on or before October 22, 1979.

However, there is an additional, separate requirement which appellant failed to meet. Under section 314(a)(2) of FLPMA, 43 U.S.C. § 1744(a)(2) (1976), and 43 CFR 3833.2-1(a), the owner of such a claim must also file a copy of evidence of annual assessment work performed during the preceding year on or before December 30 of the year following the calendar year in which he files the copy of this certificate of location, or on or before October 22, 1979, whichever date is sooner. Thus, appellant was required to file evidence of assessment work on or before October 22, 1979, at the latest, as this was sooner than December 30 of 1980, the year following the calendar year of his original recording. Kenneth K. Parker, 48 IBLA 129 (1980); Alice E. Deetz, 48 IBLA 59 (1980); Jim Adams, 47 IBLA 281 (1980).

As is evident from his statement of reasons, appellant misread this requirement to mean that he had until December 1980 to file evidence of assessment work. While we appreciate that appellant was attempting in good faith to comply with the recordation requirements, we are unfortunately constrained by Departmental regulations to conclude that his claim was properly declared void upon his failure to comply. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a); Kenneth K. Parker, *supra*; Alice E. Deetz, *supra*; G. H. Monk, 47 IBLA 213 (1980).

Appellant's suggestion that he may be regarded as having notified BLM of his intent to hold this claim, in lieu of filing evidence of assessment work, is unpersuasive. Notice of intention to hold is acceptable only in limited circumstances and must follow a prescribed format. 43 U.S.C. § 1744(a)(1) (1976); 43 CFR 3833.2-3. These requirements were not met here.

Our decision is without prejudice to appellant's relocating this claim and refiling notice of relocation with BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

